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Your Land and Indiana Highways

L. T. Wallace

C. A. Sargent

J. H. Atkinson

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your land and **INDIANA HIGHWAYS**

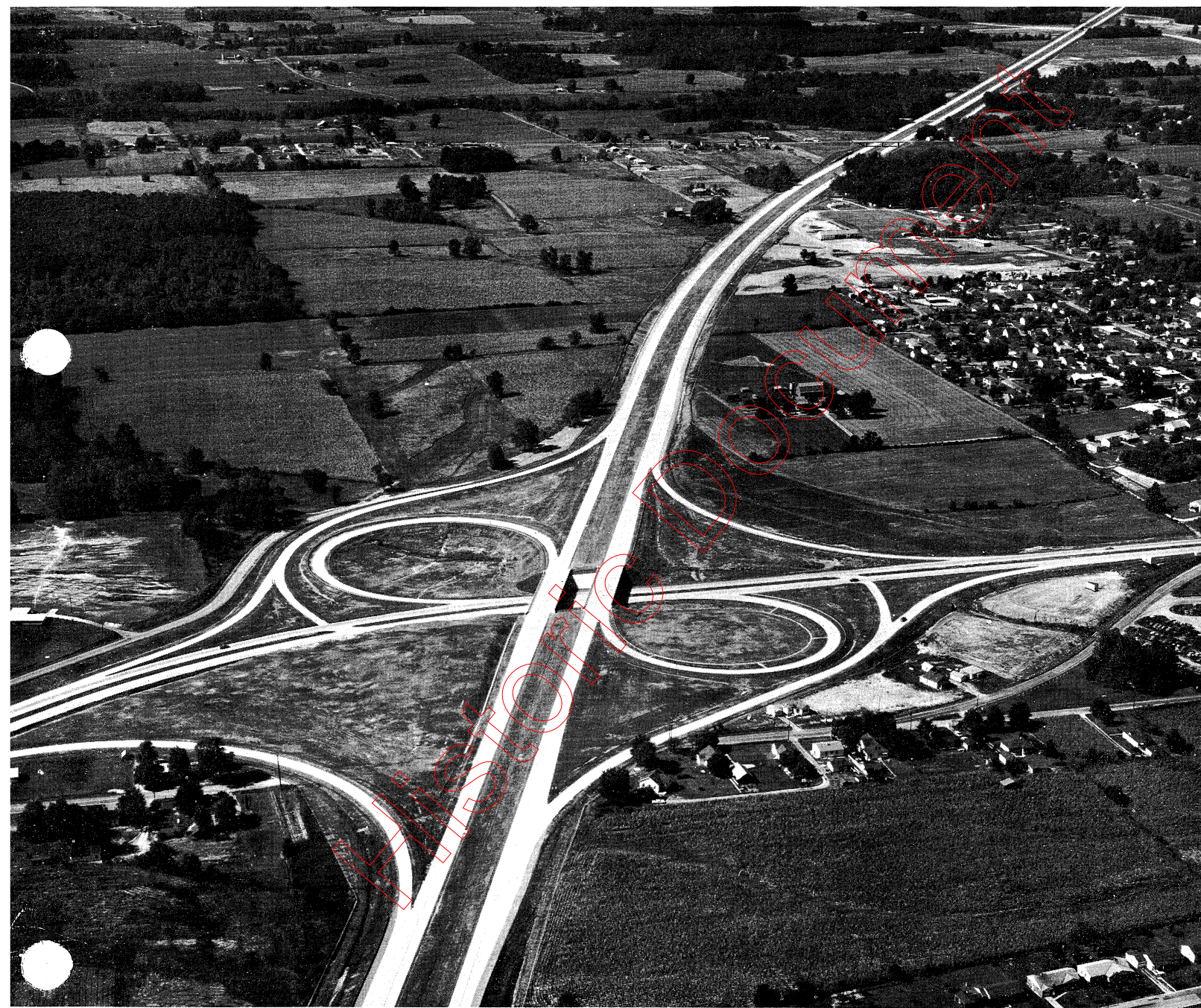


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YOUR LAND AND INDIANA HIGHWAYS

L. T. Wallace, C. A. Sargent, J. H. Atkinson
Department of Agricultural Economics

The construction of new highways affects all the people in Indiana. Almost everyone in the state uses our roads. With an increasing population, widespread commuting and increased traffic flows coming into Indiana from out of state, there will be more new roads and highways built in the near future.

In 1962, the United States population had a registered motor vehicle for every 2.7 persons. The number of cars on our existing roads is increasing each year. New roads must be built to handle the growth in traffic that will result.

This publication is directed toward those people whose land will be needed for highway development. The following paragraphs bear directly on current questions now being asked by Indiana residents. Some of the questions landowners want answered will undoubtedly not be discussed. At the same time, some of the material here may soon be obsolete because of legislative or general policy action. If the landowner has any question on any matter connected with land acquisition, he should seek the information from a qualified person and, in the meantime, do his best to keep up to date on the procedures affecting his holdings.

Rights and Damages

Q. Does the State have the authority to determine the route of a new highway?

A. Yes, highway location is an exclusive sovereign right, and is exercised in this State through the Indiana State Highway Commission.

Q. What gives the State the right to take an individual's land?

A. The right of eminent domain, which means that the Government has the right to take private property for public use, or by legislative authority it can extend this right to certain businesses concerned with public service. Public utilities (gas, electricity, water), railroads and commercial carriers are examples of business to which the power of eminent domain have been granted by legislative authority.

Q. Does the Highway Commission obtain fee title to all the land it takes?

A. Not necessarily. The Commission has the authority to take either fee title or easement. Generally, where only part of the owner's entire land holdings are taken, an easement is procured. If all the owner's land is taken, title to that land is obtained in fee. In the vast majority of cases, the Highway Commission merely obtains an easement to the needed land.

Q. What rights of protection does an individual have to the taking of his land?

A. The Fifth Amendment to the Constitution of the United States and Article I, Section 21, of the Indiana Constitution reads: "No person shall . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken without just compensation for public use." Thus, the only restrictions on the governmental power is that a land taking must be for public use, and that the owner must receive just compensation for that which is taken from him.

Q. What is just compensation?

A. The courts' interpretation of just compensation is that the property owner must be made "whole"--that is, compensated for what he has lost.

When the taking involves the entire property, the measure of just compensation is the fair market value of the entire property as of the date of taking. Fair Market Value is defined as: "The highest price estimated in terms of money which the property will bring if exposed for sale in the open market by a seller who is willing but not obligated to sell, allowing a reasonable time to find a buyer who is willing but not obligated to buy, both parties having full knowledge of all the uses to which it is adapted and for which it is capable of being used".

When the taking involves less land than the entire property, it is called a partial taking, and the Before and After method of valuation is used. The Fair Market Value of the entire parcel before taking, minus the Fair Market Value of the remainder after taking equals just compensation.

Q. What determines the just compensation in a partial taking?

A. The over-riding principle of determining just compensation is "what must be done pecuniarily to put an individual back in the same position he was in before the highway right of way was taken?"

Some factors which may cause a reduction in the Fair Market Value in the remainder are changes in existing or future access, reduction in value due to the proximity to the dwellings or buildings, the removal of trees, shrubs, etc., from the owner's property, changes in grade created by fills or cuts in the new construction, rearrangements of fields and fencing required by the new construction, rearrangements of

drainage facilities required by the new construction and any other factors which would cause a reduction in the Fair Market Value and saleability of the remainder of the property. Just compensation includes the Fair Market Value of the take and reduction in the Fair Market Value of the remainder. The following hypothetical example and data used are not taken from any specific land acquisition case, but are shown simply to illustrate how some damages are calculated.

Hypothetical Calculation of Just Compensation Payments to Indiana Landowner

Situation: A new road will pass through a 110 acre farm. A total of 15 acres will be needed for road construction right of way, a barn will have to be removed, and fencing will need to be replaced. The new road will cause two parcels of land to be left: a 45 acre tract with no buildings on it, and a 50 acre tract with house and other outbuildings on it.

Calculations:

110 acres @ \$250 per acre (bare land)	\$27,500.
Value of buildings is \$50 per acre (use value)	<u>5,500.</u>
Total value of land and buildings	\$33,000.
Value of 15 acres of land taken @ \$250. per acre	3,750.
Value of barn taken	2,000.
Severance Damage:	
(1) Loss of bldg. use, reduction in acreage, pointed rows, etc. etc. 45 acres @ \$60.= \$2,700.)	
(2) Loss of utility of bldg., pointed rows, etc. 50 acres @ \$30.= \$1,500.)	4,200.
Other Damages:	
Fence taken	<u>500.</u>
Total compensation for land, building and damages	\$10,450.
Fair Market Value of residual tracts after taking	<u>\$22,550.</u>

Q. Does an individual have any opportunity to obtain further damages if something is overlooked at the initial settlement?

A. Only by Administrative authority by the Indiana State Highway Commission. These damages must be clearly defined and justified under proper appraisal procedures to receive favorable consideration.

Q. May persons whose land has not been taken collect damages?

A. No. Claims of this nature have not been allowed. For example, a motel owner may lose business when a highway is rerouted; a farmer renting several tracts of land may have his operations disrupted by a highway. These are considered normal business risks and are not subject to compensation.

Q. Do appraisers consider the future in arriving at their opinion of the Fair Market Value?

A. Yes, all factors available are considered, including any future changes affecting the Fair Market Value of the property either before or after which are immediately foreseeable, including the knowledge of changes that have occurred to other properties similarly situated.

Land Acquisition and Evaluation Procedures

Q. Who approves new highway routes?

A. The Indiana State Highway Commission approves new highway routes including location and design. If Federal funds are used to finance any of the acquisition or construction the final routes and plans must be approved by the Federal Bureau of Roads.

Q. When does the Division of Land Acquisition of the State Highway Commission enter the picture?

A. A representative of the Division of Land Acquisition will be present with road location and planning departments as consultant in selecting a route for the proposed highway so that right of way costs may be considered when the approved route is finally determined.

Again, a representative of the Division is there when the proposed plans are finally checked before official acceptance of the plans by the Highway Commission and the Bureau of Public Roads.

However, the first contact made with the owner involving actual acquisition will probably be made by an appraiser seeking all pertinent information about the property in order to make a fair and equitable appraisal of the taking.

Q. When are the highway appraisers contacted?

A. After the abstracting has been completed, and after the Division Engineering Section has prepared the necessary descriptions and incorporated the descriptions in legal deed or easement forms, the files are forwarded to the Appraisal Section. All of the parcels contained in an entire project are given to the Appraisal Section at the same time so that equitable values may be developed over the complete project area. Of course, each parcel must be considered on its merits, but each must also be correlated with the project as a whole.

Q. Does the Highway Commission always use its own employees as appraisers?

A. No. The Highway Department does not have enough staff appraisers to appraise all parcels needed for road construction. In addition to the staff appraisers available, fee appraisers are employed on a contract basis. These men, as well as staff appraisers,

are selected on the basis of their up-to-date knowledge and technical ability. Fee appraisers working for the Commission must have an Indiana Real Estate Brokers license.

Q. Is agricultural land, for highway purposes, appraised by appraisers who are familiar with agriculture?

A. Yes, for any agricultural land, subject to acquisition for right of way use, the Commission hires appraisers who are thoroughly familiar with agriculture. These men are usually members of Farm Managers and Rural Appraisers associations.

Q. Are there any prescribed procedures all appraisers must observe?

A. Yes. The Highway Commission requires that highest appraisal standards be followed in the written appraisal submitted to the Division of Land Acquisition.

Q. Are appraisals prepared by staff or independent appraisers reviewed?

A. Yes. The initial contact of the staff and/or independent appraiser is only to ensure that the plans are thoroughly understood, and in no way is an attempt made to influence the judgment of the appraiser. After appraisal of the parcel, the review appraiser checks to see all appraisal procedures have been properly followed and that all pertinent facts are included.

Q. How does the appraiser arrive at the Fair Market Value for the property he is appraising?

A. The appraiser arrives at the Fair Market Value by following established appraisal processes which include gathering of all pertinent area and property data. This would necessarily include a knowledge of other sales of like or similar properties in the immediate area. It would also include

any and all other pertinent facts which would affect the Fair Market Value of the property at the time the value is established.

Q. Is any effort made to inform landowners of land acquisition?

A. The effort to keep property owners informed begins with the first public hearing on establishment of a location and continues through the acquisition processes.

Q. Does the landowner have an opportunity to talk to the land agents who will buy his land?

A. Yes. After the parcels have been appraised, land agents from the Division of Land Acquisition of the Highway Commission call on property owners. These men expect questions from the property owners. They explain the highway plans, and the effect the highway will have on the owner's property.

Q. What offer is made to the property owner?

A. The Fair Market Value as determined by the approved appraisal. Deviation from the approved appraisal figure is not permitted unless an error, omission or other mitigating factors can be pointed out during the conversation with the landowner.

Q. What happens after the agent makes the offer?

A. If the offer made by the Land Agent is accepted, the sale is consummated. The documents are executed and processed for payment.

If, however, the offer of the Land Agent is rejected, the matter is referred to the court for further proceedings.

Q. What is the general sequence or order of people a property owner might expect to see about his land?

A. 1. The planning and location group. During this period several locations may be under consideration, and it should not be assumed that the new highway will necessarily go through the property. A representative of the Division of Land Acquisition will be present sometime during this phase in order that the cost of each route being studied may be considered in the final decision of the road location.

2. Staking and design crews (including consultants). During the sequence first described, there will be some survey activity and, after the line of a new road has been finally determined and approved, the center line of the new road will be laid out. To gather the necessary data to complete the design of the highway and/or bridges, if any, engineers and their assistants will make such investigations, surveys and perhaps borings as are necessary to complete the design.

3. After the highway plans have been completed and approved for acquisition of right of way, ordinarily the first contact with the owner is made by an appraiser of the Division of Land Acquisition.

4. After the appraisal is completed, a Land Agent of the Division will call on the owner and proceed as already outlined.

Q. Is there any difference in land buying procedures for a state or interstate highway?

A. No. There is no difference in land buying procedure for either state or interstate developments.

Q. Does the Highway Commission always buy rights of way?

A. No. There have been many cases of free grants of land donated by people who want state roads to improve their local area and enhance their property values.

Land Condemnation Procedures

Q. Where court proceedings are required, is this always an indication of landowners' dissatisfaction?

A. No. Condemnation suits do not always mean dissatisfaction with appraisal prices and offers to purchase. Estates, cases of joint ownership, trusts of various kinds, and so on, may desire a court judgment.

Q. Under what legal provisions does the State have the right to institute condemnation proceedings?

A. Condemnation procedures are provided for under the Eminent Domain Act for Indiana, 1905, and the ensuing amendments since that date.

Q. Where is the condemnation suit filed?

A. The Attorney General's office files suit in the county in which the land is located.

Q. Does the landowner have the right to object to this condemnation suit?

A. Yes. The Statute provides procedures available to the property owner after the suit is filed.

Q. On what grounds are objections generally filed?

A. The most common objections filed concern:

1. question of whether the land was needed for the right of way.

2. question of whether or not the land is being acquired for public use.

Q. In court, who decides what is a "fair price"?

A. "Fair price" is determined by the court and jury having jurisdiction over the particular case.

Q. Can the property owner or the State secure additional appraisers for court testimony?

A. Yes. New appraisals can be secured or the old appraisals revised at any time prior to final court or jury judgment.

Q. What procedural steps follow filing of condemnation proceedings?

A. If no objections are made, or if objections are made and overruled, the court will enter an "appropriation order" that the Highway Commission has the right to acquire the land. When this court order is entered, the court then appoints three disinterested freeholders to appraise the land and report their findings to the court. The appointment of the court appraisers is entirely up to the judge. When the appraisal is made, the State must deposit with the Clerk of the Court the amount of the award in order to secure possession of the real estate. After the money is deposited the Statute provides the procedures which may be followed in withdrawing the money from the Clerk's office in behalf of the owner of the real estate.

Q. Is the court-appointed appraisers' evaluation filed with the court considered final?

A. No. The Statute provides that either side, within ten (10) days from the date the appraisal is filed with the court, may file exceptions to the court-appointed appraisers' award and if either side does file exceptions, the issues are closed and the final determination as to the amount of just compensation will then be determined by the court and jury having jurisdiction in the case. If, within the ten (10) day period provided by law, neither side files exceptions, the court enters judgment for the amount of the court-appointed appraisers' award and this is the final determination.

Q. Can the landowner acquire the use of the money which has been deposited with the Clerk of the Circuit Court?

A. Yes. The landowner may withdraw the amount deposited with the Clerk by following statutory provisions provided by law. These provisions allow the amount, up to the offer made by the State, to be withdrawn by the filing of a petition. Any amount exceeding that of the offer, which has been deposited, may be withdrawn by filing a written undertaking and surety to the satisfaction of the court. This surety may be in the form of a bond or other real estate owned by the landowner and located within the County. Surety as set out above is required for the purpose of guaranteeing repayment if the jury award is less than the amount deposited with the Clerk.

Research and Extension Publications available from county extension agents or from the Agricultural Publications Office, Agricultural Experiment Station, Purdue University, Lafayette, Indiana.

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Your Community and Industrialization, L. T. Wallace, Mimeo EC-231.

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Historic Document